

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Christopher Anderson	Team: Squad #2	CCRB Case #: 201702223	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 03/23/2017 12:19 AM	Location of Incident: § 87(2)(b)	Precinct: 79	18 Mo. SOL 9/23/2018	EO SOL 9/23/2018	
Date/Time CV Reported Thu, 03/23/2017 11:14 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 03/23/2017 11:14 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Salvatore Melore	02092	952004	PBBN SU
2. SGT Michael Demonda	427	945659	PBBN SU

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Gerard Cash	18279	951594	PBBN SU

Officer(s)	Allegation	Investigator Recommendation
A.SGT Michael Demonda	Abuse: Sergeant Michael Demonda stopped § 87(2)(b)	§ 87(2)(g), § 87(4-b)
B.SGT Michael Demonda	Abuse: Sergeant Michael Demonda frisked § 87(2)(b)	§ 87(2)(g), § 87(4-b)
C.SGT Michael Demonda	Abuse: Sergeant Michael Demonda refused to provide his shield number to § 87(2)(b)	§ 87(2)(g), § 87(4-b)
D.POM Salvatore Melore	Abuse: Police Officer Salvatore Melore refused to provide his shield number to § 87(2)(b)	§ 87(2)(g), § 87(4-b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)

Case Summary

On March 23, 2017, § 87(2)(b) filed this complaint on the CCRB website.

On March 23, 2017, at approximately 12:19 a.m., § 87(2)(b) walked on Dekalb Avenue towards Marcus Garvey Boulevard in Brooklyn when an unmarked vehicle, driven by Police Officer Gerard Cash and also occupied by Sergeant Michael Demonda and Police Officer Salvatore Melore, all from Patrol Borough Brooklyn North and wearing plainclothes, drove towards him. § 87(2)(b) heard someone shout, “Yo!” and looked towards the vehicle. Not recognizing the occupants of the vehicle, § 87(2)(b) continued walking and subsequently heard someone shout again. § 87(2)(b) turned and saw Sergeant Demonda and Police Officer Melore walking towards him. § 87(2)(b) continued walking, and Sergeant Demonda instructed him to remove his hand from his pocket (**Allegation A**).

Sergeant Demonda frisked § 87(2)(b)'s sweatshirt pocket and pants pockets (**Allegation B**). § 87(2)(b) allegedly requested Sergeant Demonda's shield number but received no response (**Allegation C**). § 87(2)(b) turned to Police Officer Melore, who stood nearby, and allegedly requested his shield number, but received no response (**Allegation D**). Sergeant Demonda and Police Officer Melore entered their vehicle and left the location. Sergeant Demonda and Police Officer Melore failed to prepare memo book entries and Sergeant Demonda failed to prepare a UF-250 Stop, Question, and Frisk Report as required (**Allegations E, F, and G**).

§ 87(2)(b) was not arrested or issued a summons as a result of this incident.

No video footage was found for this case.

Mediation, Civil and Criminal Histories

- Mediation was offered to and rejected by § 87(2)(b) because he wanted the officers to be disciplined.
- As of May 24, 2017, § 87(2)(b) has not filed a Notice of Claim with the City of New York (Board Review 01).
- § 87(2)(b)

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint (Board Review 03).
- Sergeant Demonda has been a member of the NYPD for nine years and has had 17 prior allegations against him in nine cases, including two substantiated allegations in one case and § 87(2)(g), § 87(4-b). In CCRB case number 201207229, one stop allegation and one physical force allegation were substantiated, with the Board recommending Charges for each allegation and the NYPD issuing a forfeiture of five vacation days for each allegation. The allegations of CCRB case number 201207229, § 87(2)(g), § 87(4-b), are nearly identical to those included in this case.
- Police Officer Melore has been a member of the NYPD for five years and has had ten prior allegations against him in five cases, including two substantiated allegations and § 87(2)(g), § 87(4-b). In CCRB case number 201607556, one stop allegation and one refusal to provide name and shield number allegation were substantiated, with the Board recommending Command Discipline B and the NYPD disposition pending.

Findings and Recommendations

Allegation A –Abuse of Authority: Sergeant Michael Demonda stopped § 87(2)(b)

Allegation B –Abuse of Authority: Sergeant Michael Demonda frisked § 87(2)(b)

Allegation C –Abuse of Authority: Sergeant Michael Demonda refused to provide his shield number to § 87(2)(b)

Allegation D –Abuse of Authority: Police Officer Salvatore Melore refused to provide his shield number to § 87(2)(b)

§ 87(2)(b) provided a telephone statement on March 27, 2017 (Board Review 04). § 87(2)(b) was interviewed at the CCRB on April 3, 2017, and answered follow-up questions by phone on April 7, 2017 (Board Review 10). Police Officer Melore and Police Officer Cash were interviewed on May 17, 2017. Sergeant Demonda was interviewed on May 23, 2017.

It is undisputed that Sergeant Demonda stopped and frisked § 87(2)(b). § 87(2)(b) stated that he walked on Dekalb Avenue approximately ten minutes after leaving a friend's house. § 87(2)(b) wore jeans with a "slim" fit, a black hooded sweatshirt, a red jacket over it, and a black "bubble" style vest on top. § 87(2)(b) had a wallet inside one of his front pants pockets and a cell phone inside the left pocket of his vest at waist level. § 87(2)(b) had nothing in his other pants pockets, nothing stored in his waistband, and nothing stored around his torso. As § 87(2)(b) walked, he listened to music at a high volume through the "earbud" style headphones that were plugged into his cell phone. § 87(2)(b) held onto his cell phone in his vest pocket.

§ 87(2)(b) walked on the right side of Dekalb Avenue in an area that was dark except for light casting from a supermarket in front and to the right of § 87(2)(b). § 87(2)(b)'s attention was first drawn to the officers' vehicle when it drove towards him and reduced its speed. § 87(2)(b) heard a voice shout, "Yo!" § 87(2)(b) looked up and saw Police Officer Cash in the front driver side seat of his vehicle. § 87(2)(b) did not recognize Police Officer Cash, who was in plainclothes, ignored him, and immediately continued walking. § 87(2)(b) heard a voice shout, "Yo!" two more times and looked up to see Sergeant Demonda and Police Officer Melore, also in plainclothes, walking towards him. § 87(2)(b) continued walking.

Upon hearing a voice shout, "Yo!" again, § 87(2)(b) removed his headphones and turned around. Sergeant Demonda instructed § 87(2)(b) to remove his hand from his pocket. § 87(2)(b) did so, holding his cell phone and saying, "All I've got is my phone. What do you want?" Sergeant Demonda walked to § 87(2)(b) placed his hands on his chest, and guided him backwards to a wall. Sergeant Demonda squeezed § 87(2)(b)'s thighs near his front pants pockets, his buttocks, and patted the inside of § 87(2)(b)'s thighs and his legs, down to his ankles. Police Officer Melore stood approximately one foot away and did not interact with § 87(2)(b).

§ 87(2)(b) requested Sergeant Demonda's shield number but received no response. § 87(2)(b) told Police Officer Melore that since Sergeant Demonda was "busy," he wanted Police Officer Melore's shield number. Police Officer Melore did not respond.

As per Sergeant Demonda, he "targeted" the area around the incident location to "see what he can find" because of shootings that had occurred in the area in the week prior to this incident. Sergeant Demonda's attention was first drawn to § 87(2)(b) when he saw him walking towards Sergeant Demonda's vehicle from approximately 20 feet away, stop, turn left, turn right, and continue walking. § 87(2)(b) looked at Sergeant Demonda's vehicle, turned

towards a wall, and placed his hand in his right hand jacket pocket, located slightly above his waist. Police Officer Cash yelled, “Hold up one second. Police.” § 87(2)(b) did not respond and continued walking. Police Officer Cash stopped the vehicle.

Sergeant Demonda exited the vehicle, walked towards § 87(2)(b) and held an open palm up to him, signaling him to stop. § 87(2)(b) made a “surprised” facial expression and held his hand in a “cupped” position in his jacket pocket, which created a “bump” appearance. Nothing about this pocket, other than the shape of § 87(2)(b)’s cupped hand inside of it, drew Sergeant Demonda’s attention to it. Sergeant Demonda thought that § 87(2)(b) may have been armed because, earlier, he had altered his stride and placed his hand in his pocket and because of the shape of the pocket in which § 87(2)(b) held his hand. Due to these reasons and the fact that the officers “usually” looked for guns, Sergeant Demonda thought that § 87(2)(b) may have been carrying a gun. At this point, for these reasons, § 87(2)(b) was not free to leave.

Sergeant Demonda instructed § 87(2)(b) to take his hand out of his pocket, which he did. § 87(2)(b) held something like headphones in his hand, which may have been connected to a cell phone. Sergeant Demonda did not observe anything else on § 87(2)(b)’s person and did not recall whether the shape of the pocket from which § 87(2)(b) withdrew his hand changed in appearance after § 87(2)(b) withdrew his hand from it. Sergeant Demonda frisked the pocket from which § 87(2)(b) withdrew his hand.

§ 87(2)(b) asked why Sergeant Demonda was searching him and became a “little violent” by elevating the volume of his voice, saying, “Go fuck yourself,” and tensing his arms and hands. Because of this response and no other reason, something “didn’t feel right” to Sergeant Demonda, and he feared for his safety. For this and no other reason, Sergeant Demonda frisked the areas where he thought that § 87(2)(b) could easily grab, including his waistband and front and rear pants pockets.

§ 87(2)(b) did not request the shield numbers of Sergeant Demonda or Police Officer Melore during their interaction. Neither Sergeant Demonda nor Police Officer Melore provided his shield number to § 87(2)(b).

Police Officer Melore stated that when he first saw § 87(2)(b) walked at a “rapid” pace and had one of his hands placed inside one of his jacket pockets, which appeared “weighted” in that they contained a bulge that would be produced by an item sitting inside the pockets and weighing them down. As Sergeant Demonda approached § 87(2)(b) he instructed § 87(2)(b) to remove his hands from his pockets, which he did, holding a cell phone in his right hand.

Police Officer Melore stated that after § 87(2)(b) removed his hand from his pocket, he focused his attention on his hands and could not describe whether the pocket still contained any bulges. Sergeant Demonda frisked the pocket from which § 87(2)(b) removed his cell phone and front pants pockets, which contained bulges that were “smaller than a hand” and “could have been anything.” Police Officer Melore thought that the bulges might have been guns but did not recall any aspects of the bulges that were suggestive of them being produced by guns. Police Officer Melore did not hear § 87(2)(b) request the shield number of either himself or Sergeant Demonda and denied that either he or Sergeant Demonda provided his shield number to § 87(2)(b).

Police Officer Cash stated that as he drove his vehicle towards § 87(2)(b) held one hand outside of his clothing and one hand inside the front pocket of his jacket. Police Officer Cash saw a bulge in this pocket and did not recall seeing any additional

bulges in § 87(2)(b)'s clothing. Police Officer Cash described the bulge he saw as having dimensions of slightly larger than approximately one and one half inches in width, four to five inches in length, and one to two inches in thickness. Police Officer Cash thought, due to the shape of the bulge and recent gang violence in the area and no other reason, that § 87(2)(b) may have had a gun in this pocket.

Innocuous behavior alone will not generate a founded or reasonable suspicion that a crime is at hand, which is necessary for officers to stop an individual. Furthermore, in order to frisk an individual, officers must have a reasonable suspicion that the individual is armed. People v. DeBour, 40 N.Y.2d 210 (1976) (Board Review 05). Absent the defined outline or configuration of a gun, undefinable pocket bulges can be a number of innocuous objects and do not justify a frisk for a gun. People v. Taveras, 155 A.D.2d 131 (1990) (Board Review 06). Absent an articulable foundation for the entrenchment upon individual liberty, police suspicions remain merely “hunches.” People v. Johnson, 30 N.Y.2d 929 (1972) (Board Review 07).

§ 87(2)(b)'s eye contact with the plainclothes officers' unmarked vehicle, ignoring it, and continuing to walk were all actions corroborated by Sergeant Demonda. With these actions in mind, even had the totality of § 87(2)(b)'s actions prior to Sergeant Demonda stopping him included the changing of direction and inserting of his hand into his pocket that Sergeant Demonda referenced, each of these actions constituted innocuous behavior. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

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Sergeant Demonda cited identical reasons for frisking § 87(2)(b)'s jacket pocket as he did for stopping him. Furthermore, after Sergeant Demonda's frisk of § 87(2)(b)'s jacket pocket yielded nothing to elevate his suspicion, he undisputedly extended the scope of his frisk to § 87(2)(b)'s front and back pants pockets. Because Sergeant Demonda stated his reason for doing so as § 87(2)(b)'s verbal tone and tensing of his arms causing him to think that “something didn't feel right,” this justification represents a “hunch” as referenced in Johnson.

§ 87(2)(b), § 87(2)(g)

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§ 87(2)(b), § 87(2)(g)

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Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date